IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

OP.No. 510 of 1999(I)

PETITIONER:

PRINCE MATHEW GEORGE
ENATHICKAL CHIRAIMALIL
OLASSA P.O.
KOTTAYAM - 686 014.

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY THE SECRETARY TO GOVERNMENT OF INDIA IN THE MINISTRY OF DEFENCE

2. FIRST APPELLATE COMMITTEE MINISTRY OF DEFENCE, GOVERNMENT OF INDIA, NEW DELHI

3. CDA (P), ALLAHABAD

BY ADV. SRI.V.V.SURESH, ADDL.CGSC
SRI. AJITH KRISHNAN, ADDL.CGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/11/2007, THE COURT ON 19/11/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: A true copy of the call letter for enrolment in the IAF dated 4-1-1990 issued by the Central Airmen Selection Board to the petitioner.

Ext.P2: A true copy of the certificate dated 1-8-1992 issued by the Chief Instructor. No.1 Guided Weapon Training Institute, Baroda to the petitioner.

Ext.P3: A true copy of certificate dated 1-8-1992 issued by the commanding officer, No.1 Guided Weapons Training Institute to the petitioner.

Ext.P4: A true copy of Trade Proficiency Certificate dated, 28-2-1995 issued by the Commanding Officer, Unit No.2256 Squardron, AF to the petitioner.

Ext.P5: A true copy of the Personnel Occurrence Report dated 1-3-1995 in relation to the petitioner including the discharge slip.

Ext.P6: A true copy of the letter No.RD/2706/733212/Pen-Wel(DP) 2 dated 26-10-1995 issued by the OIC Pen-Wel (DP) for AOIC AF Records to the petitioner.

Ext.P7: A true copy of the appeal submitted by the petitioner to the Secretary, Ministry of Defence, Government of India.

Ext.P7(a): A true copy of the testimony signed by Shri.George Mathew and others in November 1995 addressed to the Secretary.

Ext.P8: A true copy of the letter No.7(1788)/96/D(Pen-A&AC) dated 11-3-1998 issued on behalf of the under Secretary to the Government of India.

Ext.P9: A true copy of the certificate dated 17-6-1998 issued by the Prof. and the Head of the Department of Psychiatry, Medical College Hospital, Kottayam.

Ext.P10: A true copy of the representation dated 20-5-1998 made by the petitioner to the Director General Medical Services (AF), The Air Officer in charge, Air Force Records.

Ext.P11: A true copy of the representation dated 20-5-1998 made by the petitioner to the Director General Medical Services (AF), The Air Officer In charge, Air Force Records.

Ext.P12: A true copy of the representation dated 20-5-1998 made by the petitioner to the Director General Medical Services (AF), The Air Officer in charge, Air Force Records.

Ext.P13: A original affidavit dated 5-1-1992 sworn to by Shri.M.T.Samuelkutty.

Ext.P14: A original affidavit dated 5-1-1999 sworn to by Smt.Lizzy George.

// True copy //

P.A. to Judge

A.K.BASHEER, J.

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O.P.No.510 OF 1999

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Dated this the 19th day of November 2007

JUDGMENT

Petitioner who was “invalided out” of service by Air Force authorities due to 'Schizophrenia' has preferred this original petition praying for issue of a writ of mandamus or such other appropriate writ or direction commanding respondents 1 to 3 to quantify and disburse disability pension to him. He has also prayed for issue of a writ of certiorari to quash Ext.P7 and P8 orders of the Air Force authorities declining his request for disability pension on the ground that his disease was not attributable to military service. The short question is whether the action of the respondents is legally valid and sustainable.

2. Shorn of necessary details, relevant facts that may be necessary for disposal of this original petition may be briefly noticed.

3. Petitioner joined the Indian Air Force on January 1, 1990 after going through the selection process successfully.

It is the case of the petitioner that after his enrollment, he had completed Missile Fitter Course and had passed out as Group-I tradesman of the Air Force from No.1 Guided Weapon Training Institute at Baroda. He had also successfully completed No.4 OSA-AK-M Course held between February and August 1992 and had thus gained specialization as Power Plant Technician (GP-219) from the same institution referred to above. Exts.P3 and P4 are stated to be the certificates issued by the said institute for the successful completion of the two courses.

4. But as misfortune would have it, petitioner stated to show symptoms of some mental illness sometime in early 1994. The summary annexed to the proceedings of the Medical Board reveals that the petitioner was admitted in the Command Hospital at Chandimandir on May 7, 1994 at the instance of his unit, with a report that he had been showing “erratic behaviour” recently. The report further stated that the patient had been showing “abnormal behaviour” for the last two months. He had not been reporting for work. He

was picked up by Air Force Police and brought to the unit. He spoke irrelevantly and stated that he was the creator of the Universe. He also claimed that he had developed special powers and he could move clouds in the sky. He suspected that people around him were watching him and that his brain was being pulled out, etc. etc. A true copy of the medical proceedings of the Medical Board with the summary of the case is on record as Ext.R1(a) which has been produced by the respondents along with their counter affidavit.

5. The Medical Board, after conducting a detailed examination and considering the entire case history, recommended that petitioner had to be invalided out of service. This recommendation was based on the observation made by the Medical Board that the petitioner had developed “post-psychiatric depression and residual psychosis”. After he was sent back to his unit he had tried to kill himself by consuming 50 tablets of Largactil. It was also noticed that “petitioner was de-motivated for further service”. Therefore, the Medical Board took the view that because of the residual

impairment, post-psychiatric depression and also the attempted suicide, he was not likely to have a good prognosis. Thus, he was found to be unfit for further retention in the service and therefore the Medical Board recommended that the petitioner may be invalided from service.

6. Learned counsel for the petitioner primarily assails the decision of the Air Force authority in refusing to grant disability pension to the petitioner. It is contended by the learned counsel that no material had been produced to show that the disease of the petitioner ('schizophrenia') was hereditary, genetic or constitutional. The disease could only have been contracted by the petitioner because of the severity of conditions of the service. It had close nexus to the service conditions and was undoubtedly attributable to it. It is pointed out by the learned counsel that the Medical Board in its report had categorically stated that there was no past history of any mental illness in the case of the petitioner. It was further indicated that “there was only a history of moderate consumption of alcohol since few months”. Learned

counsel lays heavy emphasis on the absence of any reasons in Ext.R1(a) in support of the conclusion that the disability of the petitioner was due to genetic or constitutional reasons. Learned counsel submits that in the absence of any data or material to show that petitioner was suffering from any “constitutional disease” which ultimately resulted in 'schizophrenia', it ought to have been safely concluded that the onset of the disease was only attributable to his service.

7. In this connection, learned counsel relies on a decision rendered by a Full Bench of this court in **Baby V. Union of India [2003 (3) KLT 362]**. Per contra, it is contended by learned counsel for the respondents that the conclusion and opinion of the Medical Board had become final. Petitioner cannot be heard to say that his disease was attributable to conditions of service or that it was caused or aggravated by it. Learned counsel refers to Rule 153 of the Pension Regulations in the Air Force, 1961 (Part I) and also para 6 of the Rules for Casualty Pensionary Awards, 1983. He further relies on the decision of their Lordships of the

Supreme Court in **Controller of Defence Accounts (Pension) V. Balachandran Nair [2005 (4) KLT 703].**

8. It is true that in Part III of Ext.R1(a) proceedings of the Medical Board, while recording the disability of the petitioner as a "constitutional disease", the Board had not stated any reasons for arriving at such a conclusion. The Western Command attached to Command Hospital, Chandi-mandir had accepted the recommendation of the Medical Board as revealed from Ext.P5. In this document also the authority which passed the said order had not considered the question whether the actual cause of disability or disease was attributable to service. The appellate authority which passed Ext.P8 order had observed that the onset of the invalidating disease was in May, 1994 while the petitioner was serving in peace area. There was "no field service in close time relationship to onset of disease." There was no head injury or debilitating illness prior to the onset of the disease. There were no service aggravating factors including unusual stress leading to the disease. The above aspects of the issue were

considered by their lordships in **Balachandran Nair's case (supra)**. Regulations 173 and 423 of the Regulations for the Medical Services of the Armed Forces, 1983 were also extracted for easy reference in the above judgment. With specific reference to Rule 173, the court observed that it must be established that the injury/disease was due to military service or was aggravated by it leading to invalidation. Their lordships further went to hold that since the Medical Board had categorically opined that the illness suffered by the respondent in **Balachandran Nair's case (supra)** was not attributable to military service, the High Court was not justified in directing the authorities to pay disability pension.

9. It is pertinent to note that the petitioner has not sought to challenge the report of the Medical Board. No material has also been placed before this court to substantiate his contention that his disease was not a constitutional or hereditary one. It may be true that the Medical Board has not stated reasons for arriving at the conclusion that petitioner's

disease was a constitutional one. But the decision in **Balachandran Nair's case (supra)** which is a binding precedent has to be accepted.

Therefore, the original petition fails and it is accordingly dismissed.

(A.K.BASHEER, JUDGE)

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